RECORD
AND
BRIEFS

Supreme Court, U.S.
FILED
09-729 DEC 17 2009
OFFICE OF THE CLERK

(4)

No 09-

IN THE
Supreme Court of the United States

CARL MELVIN TOWNES,

Petitioner,

v

LARRY W JARVIS, Warden,
GENE M JOHNSON, DIRECTOR,
VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

SUPPLEMENTAL APPENDIX

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V Hilton (A)

AO 241
REV 4/82

PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

7:04CV00245

United States District Court	District: Western District, Roanoke Division	
Name: Carl Melvin Townes	Prisoner No: #193004	Docket No: CLERK'S OFFICE U.S. DIST. COURT ROANOKE, VA FILED

Place of Confinement: Bland Correctional Center

MAY 17 2004
JOHN F CORCORAN, CLERK
BY: DEPUTY CLERK

Name of Petitioner (include name under which convicted): Carl Melvin Townes VSP #193004

Name of Respondent (authorized person having custody of petitioner): Gene Johnson, Director-Virginia Department of Corrections
V. Larry W. Jarvis, Warden-Bland Correctional Center

The Attorney General of the State of: Virginia, Jerry W. Kilgore

PETITION

1 Name and location of court which entered the judgment of conviction under attack: Circuit Court of Richmond (Manchester), 10th & Bull Street, Richmond, Virginia 23224 (see attachment)

2 Date of judgment of conviction: (Richmond) 10-7-91, (Chesterfield) 12-13-91, (Hanover) 2-19-92

3 Length of sentence: (Richmond) 4 years, (Chesterfield) 20 years w/12 years suspended (see attachment)

4 Nature of offense involved (all counts): (Richmond) Robbery /use of a firearm (nolle prosequied), (Chesterfield) Robbery /use of a firearm, (Hanover) Robbery /use of a firearm

5 What was your plea? (Check one)
(a) Not guilty ☐
(b) Guilty ☒
(c) Nolo contendere ☐
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details.

6 Kind of trial (Check one)
(a) Jury ☐
(b) Judge only ☒

7 Did you testify at the trial?
Yes ☐ No ☒

8 Did you appeal from the judgment of conviction?
Yes ☐ No ☒

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9 If you did appeal answer the following.

(a) Name of court N/A

(b) Result

(c) Date of result

(d) Grounds raised

10 Other than a direct appeal from the judgment of conviction and sentence have you previously filed any petitions applications or motions with respect to this judgment in any court state or federal?
Yes ☒ No ☐

11 If your answer to 10 was "yes" give the following information.

(a) (1) Name of court Supreme Court of Virginia

(2) Nature of proceeding Parole Eligibility

(3) Grounds raised a. Violation of Virginia Code § 53.1-151 (B1), by the Virginia Department of Corrections and Virginia Parole Board.

b. Violation of ~~equal protection~~ (Sue Kennon) case.

c. Violation of due process

(4) Did you receive an evidentiary hearing on your petition application or motion?
Yes ☐ No ☒

(5) Result Dismissed as frivolous

(6) Date of result November 5th, 2003

(b) As to any second petition application or motion give the same information

(1) Name of court Supreme Court of Virginia

(2) Nature of proceeding "Writ of Mandamus", to have the Virginia Parole Board answer my appeal concerning parole eligibility.

SA3

AO 241

(3) Grounds raised Parole eligibility / Virginia Parole Board and Virginia Department of Corrections characterization of petitioner's three robberies as being three robberies by the use of a firearm.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Dismissed

(6) Date of result October 15th, 2003

(c) As to any third petition, application or motion, give the same information.
(1) Name of court N/A

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result N/A

(6) Date of result

(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?
(1) First petition, etc. Yes ☐ No ☒
(2) Second petition, etc. Yes ☐ No ☒
(3) Third petition, etc. Yes ☐ No ☒

(e) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I did not appeal because it was (dismissed) as being frivolous, and I wanted to research it a little more to make sure that I had not missed any important issues that may be helpful in my habeas corpus proceedings.

12 State concisely every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you *should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(j) Denial of right of appeal.

A. Ground one: Violation of petitioner's due process (also see attached-memorandum)

Supporting FACTS (tell your story *briefly* without citing cases or law). Petitioner's 14th Amendment rights were violated when the Virginia Parole Board and the Virginia Department of Corrections declared him ineligible for parole consideration. Virginia Code § 53.1-151 (B1) considers three (3) convictions for robbery by the use of a firearm and the three (3) convictions [not] be part of a common scheme. Petitioner does not meet either criteria.

B. Ground two: Violation of petitioner's equal protection of law (also see attached memorandum)

Supporting FACTS (tell your story *briefly* without citing cases or law) Petitioner's 14th Amendment rights were violated in that the Virginia Parole Board does not apply the same standard to its classification. In a similar case, (Sue Ka-son), a white upper-middle-class woman in similar circumstances and facts was given consideration not given to this black male from the projects of Richmond, who was only 16 years old when committing his crimes.

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SA5

AO 241
REV 6/82

C Ground three: Violation of the seperation of powers act (also see attached-
memorandum)

Supporting FACTS (tell your story *briefly* without citing cases or law) The Virginia Department of Corrections and the Virginia Parole Board is in clear violation of the seperation of powers act because of their arbitrary and capricious deprivation of due process and equal protection of law in their classification of petitioner as being not eligible for parole consideration.

The doctrines of collateral estoppel and res judicata apply to this case.

D Ground four: _____

Supporting FACTS (tell your story *briefly* without citing cases or law) _____

13 If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reason for not presenting them: _____

N/A

14 Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15 Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein

(a) At preliminary hearing N/A

(b) At arraignment and plea N/A

SA6

(c) At trial N/A

(d) At sentencing N/A

(e) On appeal N/A

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding

16 Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes ☐ No ☒

17 Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒
(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

N/A
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

May 4th, 2004
(date)

Carl M. Townsend
Signature of Petitioner

SA7

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DIVISION OF ROANOKE

ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

MAY 11 2004

JOHN F. CORCORAN, CLERK
BY
DEPUTY CLERK

7:04CV00245

MEMORANDUM/ATTACHMENT

IN SUPPORT OF

PETITION FOR WRIT

OF HABEAS CORPUS

Date: May 4, 2004
Carl Malvin Townes
Bland Correctional Center
Route 2, Box 143
Bland, Virginia 24315

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RICHMOND, VA

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Carl M. Townes

Petitioner for Writ of Habeas Corpus

Memorandum/Attachment

From Page 2

ANSWERS TO QUESTIONS

Question #1:

Name and location of court which entered judgment under attack?

Answer to Question #1 from page 2:

b. Chesterfield Co. Circuit Court, P.O. Box 125, Chesterfield, Virginia 23832

c. Hanover Co. Circuit Court, P.O. Box 39, Hanover, Virginia 23069

Question #3:

Length of sentence?

Answer to Question #3 from page 2:

b. (Chesterfield) plus 2 years for use of a firearm

c. (Hanover) 50 years w/30 years suspended, plus 2 years for use of a firearm

SA9

Carl M. Townes

Petition for Writ of Habeas Corpus

Memorandum/Attachment

STATEMENT OF FACTS

Carl Melvin Townes, the Petitioner, has been incarcerated since February 14, 1991. He was sentenced October 7, 1991 in the Richmond City Circuit Court on one count of robbery to 4 years with one count of use of a firearm being nol prossed; sentenced on December 13, 1991 in Chesterfield County Circuit Court on one count of robbery to 20 years, 12 suspended and one count of use of a firearm in a robbery for 2 years, and sentenced on February 19, 1992 in Hanover County Circuit Court on one count of robbery for 50 years, 30 suspended and one count of use of a firearm during a robbery to 2 years. [See Exhibit A]

Petitioner, over the years, has sent multiple requests for parole eligibility to the Virginia Department of Corrections to no avail. However, he was informed that he could file an appeal of parole ineligibility to the Virginia Parole Board ("Board").

On March 5, 2002, Petitioner filed an "Appeal of Parole Ineligibility" to the Board On June 30, 2003, after having to attempt to file a "Writ of Mandamus", the Board, not the Court, responded on August 7, 2003, and denied relief from VDOC's characterization of his three robberies as being robberies by use of a firearm [See Exhibit B] On September 2, 2003, Petitioner filed a habeas corpus to the Virginia Supreme Court seeking relief and it was dismissed as frivolous on November 5, 2003. [See Exhibit C]

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ARGUMENT

The Virginia Department of Corrections (VDOC) and the Board's decision to deny Petitioner parole eligibility is arbitrary and capricious; a deprivation of due process; and a deprivation of equal protection of laws. The Board applies it's discretion, arbitrarily and capriciously, in an inconsistent manner where there is a difference in race and class: Petitioner's case v. Ms. Kennon's case. Moreover, the VDOC and Board violated the Petitioner's constitutional rights by declaring him to have been convicted of three (3) robberies by use of a firearm when the sentencing court nol prossed the firearm charge from the Circuit Court of the City of Richmond, Manchester Courthouse on June 21, 1991. The Board may lawfully deny parole for almost any reason, however, it cannot lawfully deny parole eligibility contrariwise from the sentencing order. Due process requires that Petitioner be heard and have the opportunity to present evidence on his behalf prior to the executive branch finding him guilty of a crime the sentencing court dismissed.

Ground A.

Virginia Code Section 53.1-151(B)(1) provides in relevant part, "[a]ny person convicted of three seperate felony offenses... robbery by the presenting of firearms or other deadly weapon....when such offenses were not part of a common act, transaction or scheme shall not be eligible for parole." Id. [Emphasis Added] Petitioner has [not] been convicted of three robberies by the presenting of firearms or other deadly weapon. [See again, Exhibit A]

Ground B.

The Virginia Parole Board in the case of a white, middle class female, Sue Kennon, who had committed four robberies in 1987 over a period of eight days, was classified by the Board as eligible for parole in that her crimes should be considered as a single criminal act. Petitioner's robberies were "common scheme". The crimes took place in a 10 day period as one continuing plan.

SA11

The arbitrary and capricious refusal of the Board to grant Petitioner the same form of consideration can be seen as deliberate discrimination Ms. Kennon's crimes have received different treatment from Petitioner's crimes. Petitioner was a 16 year old, black male from the projects in Richmond while Ms. Kennon is a white, middle-class female. This violates the equal protection of law as guaranteed by the 14th Amendment of the United States Constitution. [See Exhibit D]

Ground C.

Petitioner pled guilty to [the] robbery in the Circuit Court of Manchester in Richmond, Virginia on June 21, 1991. The court did [not] find him guilty of using a firearm in the commission of a robbery in Richmond City Circuit Court. Petitioner has passed his discretionary parole eligibility date without receiving a parole hearing. Moreover, the Sentencing Court made it clear in the Petitioner's sentencing order that the use of a firearm charge was nol prossed. [See again, Exhibit A]

The VDOC and Board are collateral estopped and/or res judicata from finding a conviction for use of a firearm included within Petitioner's conviction of common law robbery. The VDOC and board are a part of the executive branch of government with the Board having quasi-judicial powers in granting or denying parole or revoking the same The position taken by the Commonwealth was no firearm was used in the Richmond robbery. The Commonwealth was represented by the Commonwealth Attorney and the Court is a part of the Judicial Branch of government. Petitioner claims that the VDOC and Board have violated his procedural and substantive due process rights of the 5th and 14th Amendment of the United States Constitution.

SA13

'Ohio has changed ... and her attitudes toward them dangerous and has never altered her position'

Convicted killer finds unlikely allies

Ellin R. Crawford talks about efforts to get out of prison as her attorney, Del. Dick Black, R-Loudoun County sits with her in July at the Governor's Correctional Center for Women in Troy

EXHIBIT D

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Kaine told Gov Mark Warner in a May 16 letter that Crawford's case "merits special attention from your office," although the lieutenant governor is not taking a position on whether or not she should be freed.

Said Jenkins: "I would very much like to see Ollin Crawford released. At $26,000 a year it is absolutely doing the commonwealth no good to continue to incarcerate her. The mistakes she made years ago she has well paid for."

Black believes 18 years in prison is enough for a series of bank robberies in which no one was injured and no weapon was displayed. In every robbery, a slim young woman strolled into the bank wearing sunglasses, a baggy gray sweater and a stylish gray beret. In her left hand she held a brown sock that bulged with a lemon-shaped object that she said was a hand grenade. It was never determined what was in the sock, Black said.

Black said Crawford's case is strikingly similar to that of Sue Kennon, an upper-middle-class housewife [illegible] with a broken toy pistol before she was shot and wounded by a Suffolk pharmacist who tried to rob [illegible] Kennon in December 1981, after [illegible] Crawford, the state [illegible] Corrections Department [illegible] that [illegible] Kennon was [illegible] Earlier [illegible] committed [illegible] Crawford's over-the-[illegible] Kennon, was sentenced to 48 years. Crawford, to 70. Crawford's ransom in the robberies was $10,000.

Kennon is white and came from an affluent Chesapeake neighborhood. Crawford was a black woman from Washington, D.C., who was working as a department store cashier when she was arrested in October 1984.

Neither Crawford nor Black believes Kennon was denied parole because she is white. "I don't believe there was deliberate discrimination, but reasonable people might ask why a poor black woman hasn't received the same consideration as an affluent white woman," Black said. "We do know that two women with very similar cases received vastly different treatment."

The judge who presided over Crawford's trial and sentenced her said he had no objection to her being considered for discretionary parole.

"I did not intend myself that she be ineligible for parole," Fairfax Circuit Judge Howe Brown wrote the state Parole Board in July 1992.

Black has asked Warner, a Democrat, to grant clemency that would allow the Parole Board to consider Crawford for discretionary release. Her mandatory parole date is Feb. 7, 2021.

"I hope the governor says it is equitable to release Ollin the way Sue was released," said Black, who represents Crawford free of charge.

Warner spokesman Kevin Hall said the governor's office is looking into the Crawford case.

Black made the same request to former Republican governors George Allen and Jim Gilmore, but his timing was bad. Allen was elected on a platform of abolishing parole. Gilmore's parole board came under fire during his final month in office after it paroled a murderer and a man convicted of masterminding a murder-for-hire scheme. Warner fired the entire board, including Jenkins, who voted against the paroles.

Crawford has refused to admit guilt or express remorse for the robberies.

Asked during an interview at the Fluvanna Correctional Center for Women whether she wanted to acknowledge guilt, she hesitated, then deferred to Black sitting next to her.

"Ollin has always maintained her innocence and has never altered her position in the slightest," Black said.

Said Crawford: "Whether I did it or didn't do it, 18 years for a first-time felon ... is a bit excessive." She was convicted on four counts of robbery and three of attempted robbery.

Jenkins was no friend of criminals during his tenure as Parole Board chairman. The board had a parole grant rate of 2 percent for violent offenders and 6 percent for nonviolent criminals.

But he said something needs to be done about the three-time-loser law, perhaps expanding to three or six months the period for which a series of crimes can be considered a common scheme.

In its final month, the Jenkins board overturned the [illegible] of [illegible] Kennon and [illegible] [illegible] But the board denied parole to Crawford.

"Our concern with that case was that the board had not sat down to establish a new criteria for someone like Crawford, whose crimes were committed over two months. "There was some concern over whether we were pushing into an area the legislature should address," he said.

Like Kennon, who earned a college degree in prison, Crawford has taken college courses and is one year away from earning a bachelor's degree in sociology. She also has become a certified paralegal while in prison.

Crawford has been a model prisoner who has trained other inmates for discharge back into society, Black said.

Fairfax Commonwealth's Attorney Robert Horan, whose office prosecuted Crawford, did not respond to three phone messages seeking comment on whether she should be released.

Black retired as an Army colonel in 1994 after heading the Army's Criminal Law Division at the Pentagon. He prosecuted dozens of cases himself and supervised as many as 2,000 prosecutions during his military career.

"There is probably no more staunch supporter of harsh punishment for violent criminals," he said. "But justice requires mercy in appropriate cases."